No. 25-796

In The

Supreme Court of the United States

PRINCEWELL ARINZE DURU,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Rehearing to the United States Court of Appeals for the Ninth Circuit

PETITION FOR REHEARING

ANNE M. VOIGTS
Counsel of Record
CHRISTOFFER LEE
MAUNI JALALI
ALEXANDRIA MARX
PILLSBURY WINTHROP SHAW PITTMAN LLP
2400 Hanover St.
Palo Alto, CA 94304
(650) 233-4075
anne.voigts@pillsburylaw.com

Counsel for Petitioner Princewell Arinze Duru

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

PETITION FOR REHEARING

Petitioner Princewill Duru respectfully petitions for rehearing under Supreme Court Rule 44.2 because one day after his petition for certiorari challenging his conviction under 18 U.S.C. § 1028A was denied, the United States Court of Appeals for the Ninth Circuit issued a published decision invalidating the theory on which his conviction was affirmed.[1] *United States v. Motley,* 168 F.4th 588, 601 (Feb. 24, 2026). Applying *Dubin v. United States*, 599 U.S. 110 (2023), which was decided after Mr. Duru's conviction, *Motley* held that aggravated identity theft must be "separate from the fraud of the underlying crime." 168 F.4th at 601.

Motley constitutes "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented" within the meaning of Supreme Court Rule 44.2 for two reasons: first, although *Motley* applied *Dubin* correctly, it underscores the confusion among the courts over how to correctly apply *Dubin*, Pet. 21-22; and two, the panel majority's reasoning in affirming Duru's conviction cannot be squared with *Motley*. Had *Motley* been decided before either Petitioner's petition for certiorari or the Ninth Circuit's decision in the opinion below, the outcome could (indeed should) have been different. Fundamental fairness and due process thus call for the application of the Ninth Circuit's now binding rule to his conviction.

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[1] Mr. Duru's petition was denied on February 23, 2026. Consistent with Supreme Court Rule 44.2, this petition for rehearing is being timely filed on March 19, 2026, within 25 days of that denial.

Accordingly, Petitioner respectfully requests the Court grant his petition for rehearing and either consider his case on the merits or, in the alternative, grant, vacate, and remand to the Ninth Circuit to consider whether Mr. Duru's Section 1028A conviction can survive *Dubin* and *Motley*. (It can't.)

REASONS FOR GRANTING REHEARING

The Ninth Circuit's decision in Motley—issued one day after the denial of certiorari—merits granting this petition for rehearing. On February 23, 2026, this Court denied Mr. Duru's petition for certiorari, which challenged his Section 1028A conviction in light of *Dubin v. United States*, 599 U.S. 110 (2023). *Duru v. United States*, No. 25-796, 2026 WL 490798, at *1 (Feb. 23, 2026) (cert. denied). This Court clarified in *Dubin* that to convict a defendant under Section 1028A, the government must prove that the transfer, possession, or use of the means of identification lies "at the crux of what makes the underlying offense criminal." *Id.* at 114. As the dissent below and Mr. Duru contended, his conviction, which predated *Dubin*, did not (and could not) meet that test.[2]

One day after this Court denied review, the Ninth Circuit reversed another defendant's Section 1028A conviction in *United States v. Motley*, 168 F.4th 588, 601 (Feb. 24, 2026), because it found her use of relatives' names too attenuated to be "critical to the success" of the scheme, or to show that use *itself* was "fraudulent" or "deceitful." *Id. at* 600. The rationale

[2] Indeed, the government itself had agreed to several stays of the appeal in the Ninth Circuit because of the obvious impact of *Dubin* on the case.

the Ninth Circuit adopted in *Motley* is same as the one the dissent advocated for here—and that the majority did not adopt. *See United States v. Egwumba*, No. 22-50274, 2025 WL 1409495, at *6 (9th Cir. May 15, 2025) (Mendoza, J., dissenting). Had *Motley* been published prior to the petition for certiorari, Mr. Duru would have relied on it to establish division among the courts and to support his claim for review. *Motley* now supplies intervening authority that warrants rehearing to either consider this case on the merits or to grant, vacate, and remand in light of *Dubin* and *Motley* so that Mr. Duru is not left, through no fault of his own, a day late and a dollar short, serving the remainder of a two-year mandatory consecutive sentence for a conviction that cannot stand under his own Circuit's precedent.

1. *Motley* got *Dubin* right. Recognizing that "it is easy to conflate the fraud and deception in the underlying scheme with the fraudulent and deceitful misuse of another's identity," the court established a legal framework to help lower courts "separate the strands":

> If . . . the use of the means of identification, *considered apart from the predicate offense, is no longer fraudulent or deceptive*, then the use falls outside the ambit of § 1028A(a)(1) because any fraud or deceit was merely residual to the fraud and deceit inherent in the predicate crime.

168 F.4th at 601 (emphasis added).

Accordingly, *Motley* held, that "[t]he fraudulent aspect of using the means of identification *must stand on its own, separate from the fraud of the underlying crime*." *Id.* (emphasis added). Put differently, it "must be in addition to, and not duplicative of, the fraud or deception of the underlying crime; the use of another's identity cannot just form part of (or be used in) the scheme …." *Id.* Instead, the means of identification itself must be "used as the vehicle of misrepresentation in the predicate offense." *Id.* Applying that test, the Ninth Circuit held that the fact that the companies Motley used to submit the false claims in the underlying healthcare fraud were enrolled in Medicare under her relatives' names, not her own, was not enough to sustain her Section 1028A convictions.

2. By contrast, the majority here got *Dubin* wrong. As the dissent explained, "[t]here is a reasonable probability that a jury would have found Duru's account information, which did not … even facilitate a fraud scheme or cause its success, was not 'at the crux of' the criminal conspiracy charged in the indictment." *Egwumba*, 2025 WL 1409495, at *6 (Mendoza, J., dissenting). The facts bear this out. Mr. Duru opened bank accounts in his own name. When an overseas fraudster instructed a romance fraud victim to send money to Mr. Duru's U.S. bank account, the funds were caught by the bank's anti-fraud measures, frozen, and returned to the victim. *Id.* The scheme did not succeed through Mr. Duru's bank account; it succeeded—if at all—despite the failure of that account. Ultimately, the fraudster convinced the victim to transfer those funds directly overseas through entirely different channels,

"bely[ing] the argument that access to Duru's U.S. account was a key mover of the conspiracy because it '[made] victims believe that they were really sending money to a love interest in the United States, or a company based in the United States.'" *Id.*

Petitioner's case falls squarely and unambiguously on the side of reversal under *Motley*'s framework. If one removes the underlying predicate criminal behavior—the wire fraud conspiracy in which overseas fraudsters deceived victims into sending money to accounts controlled by co-conspirators in the United States—and ask whether Mr. Duru's use of the means of identification is still fraudulent or deceptive, the answer is self-evident. What remains, once the predicate offense is stripped away, is that Mr. Duru opened bank accounts at using his own personal information, including his real name and address. 5-ER-915-9; 5-ER-924-25; 6-ER1035; 5-ER-928-29. Another individual convinced a romance fraud victim (D.J.) to send money directly to banks in Central Asia and Indonesia before attempting to use Duru's U.S. bank account information. App.15a. When that individual instructed D.J. to send a money order to Duru's U.S. bank account, those funds were frozen and returned to the fraud victim. App.15a; 3-ER-503-16; 5-ER-929-34; 6-ER-1033; 7-ER-1317-23. The fraudster then convinced D.J. to transfer those funds directly overseas through other means. App.15a.

Opening a bank account using one's own identity is a lawful act. It is not deceptive. It is not fraudulent. It is not, simply put, identity theft (let alone aggravated identity theft). Any "fraud or deceit"

associated with the bank accounts was "merely residual to the fraud and deceit inherent in the predicate crime"—wire fraud conspiracy—and therefore "falls outside the ambit of § 1028A(a)(1)." *Motley*, 168 F.4th at 601; *see Dubin*, 599 U.S. at 128 (cautioning against readings that "collaps[e] the enhancement into the enhanced").

If anything, Petitioner's case presents a more compelling vehicle for reversal than *Motley* itself. In *Motley*, the defendant at least used the names of other persons to incorporate and enroll two companies in Medicare, and submit millions of dollars in fraudulent claims through them—and the Ninth Circuit still concluded that "in vacuo, Motley's use of her relatives' names was not fraudulent or deceptive." 168 F.4th at 607. Here, by contrast, Mr. Duru did not use another person's identity at all—he used his own. The majority below nonetheless affirmed his conviction based on nothing more than the bank accounts that Mr. Duru opened in his own name. *Egwumba*, 2025 WL 1409495, at *4. If the use of a relative's identity to incorporate and enroll a company in Medicare is not independently fraudulent or deceptive under *Motley*, then *a fortiori*, the use of one's own name to open a bank account can't be either. *Cf. United States v. Parviz*, 131 F.4th 966, 971–72 (9th Cir. 2025) (affirming a Section 1028A conviction where, in sharp contrast to the facts here, the defendant forged a medical professional's signature and credentials on a fabricated letter—an identity use that was "critical to the success of the fraudulent passport application" precisely because the defendant could not have presented a viable medical exemption without appropriating another person's professional identity).

3. The conflict between *Motley* and the decision here underscores the need for this Court either to grant review or at a minimum to grant, vacate, and reverse for the Ninth Circuit to reconsider this case under *Dubin* and *Motley*. The opinion below justified affirming Mr. Duru's conviction by concluding that: "The district court did not clearly err in finding that Duru registered a fraudulent business and used it to open two bank accounts to receive and steal funds deposited by fraud victims," and that the conspirators' possession of U.S. bank account details was at the crux of the conspiracy because access to those accounts was "capable of influencing [a] person to part with money or property"—it "[made] the victims believe that they were really sending money to a love interest in the United States, or a company based in the United States." *Egwumba*, 2025 WL 1409495, at *1, *4. That enablement theory is no different than the one *Motley* identified and rejected.

In *Motley*, the government advanced a strikingly parallel argument: that the defendant's "use of her relatives' names was at the crux because it enabled her to bill Medicare and receive payments." 168 F.4th at 602. The Ninth Circuit rejected this enablement theory in no uncertain terms, holding that the government "failed to show that Muntz's and Brown's specific identities had any bearing on the scheme, much less that they were used in a fraudulent or deceitful manner." *Id.* The court explained that because "Motley could have signed the enrollment forms herself and still 'successfully' completed the fraud scheme," the use of her relatives' identities was not "critical to the success" of the fraud. *Id.*; *see also Parviz*, 131 F.4th at 972 (requiring that the identity

use be "critical to the success" of the underlying fraud). So too here.

Motley further makes clear that the predicate offense—here, wire fraud—was not accomplished through "impersonating or passing oneself off as someone else" when a fraud victim wired Mr. Duru money to a bank account opened in his own name. *See Motley*, 168 F.4th at 601; *cf. id.* at 602 (rejecting the government's "enablement theory"). The crux of the wire fraud conspiracy charged in Count Two of the indictment was the overseas fraudsters' systematic deception of victims through romance scams, fabricated business email compromises, and false personas—not Mr. Duru's act of opening a lawful bank account using his own name. As Judge Mendoza observed, the majority's conclusion that fraudsters' access to U.S. bank accounts like Duru's Wells Fargo "was 'capable of influencing [a] person to part with money or property'" did not establish that Mr. Duru's account information played the "central role" or occupied "the crux of what makes the underlying offense criminal" that *Dubin* demands. *Egwumba*, 2025 WL 1409495, at *6 (Mendoza, J., dissenting). The bank account was, at most, a way-station in a much larger scheme; it was not, in *Dubin*'s words, "at the crux of what makes the underlying offense criminal." 599 U.S. at 114.

4. Relief is appropriate under this Court's rules. Mr. Duru did not have the benefit of *Motley* in his petition for certiorari before this Court, just as he did not have the benefit of *Dubin* at his trial. But those cases make it clear that the substantive scope of Section 1028A is too narrow to sustain his conviction.

Moreover, *Motley* presents an intervening circumstance of a substantial or controlling effect and another substantial ground not previously presented, given its publication just one day after this Court's denial of certiorari. As this Court held in the context of determining whether "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final," "selective application of new rules violates the principle of treating similarly situated defendants the same." *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987); *id.* at 323. That is even more so where, as here, the rule is a substantive one about the scope of a particular criminal statute and the conduct that it does (and does not) encompass.

Motley is not merely a restatement of *Dubin*; it is the first published Ninth Circuit decision to announce a concrete analytical framework for applying *Dubin's* "crux" test, establishing a framework that did not exist when the panel below decided this case or when Petitioner sought certiorari. Had *Motley* been available to the panel below, it would have been binding circuit authority requiring the court to ask whether Mr. Duru's identity use, considered apart from the predicate offense, was independently fraudulent or deceptive. The answer to that question is no. Finally, had *Motley* been available to Petitioner at the certiorari stage, it would have furnished precisely the kind of binding, published circuit authority that strengthens a petition for review—and would have demonstrated a live, conflict between the unpublished disposition below and the Ninth Circuit's own published law. The one-day gap between this Court's denial of certiorari and the

publication of *Motley* is a matter of fortuity, not substance, and it should not deprive Petitioner of the benefit of the laws *actually* governing his case.

CONCLUSION

For all the foregoing reasons as well as the reasons set forth in his Petition, Petitioner respectfully requests that the Court grant his petition for rehearing and either grant review or, in the alternative, grant certiorari, vacate the judgment below, and remand to the Ninth Circuit with instructions for further proceedings consistent with *Dubin* and *Motley*.

Respectfully submitted on this 19th day of March, 2026.

/s/ Anne M. Voigts
Anne M. Voigts
Pillsbury Winthrop Shaw
Pittman LLP
2400 Hanover St.
Palo Alto, CA 94304
(650) 233-4075
anne.voigts@pillsburylaw.com

**Counsel of Record for Petitioner*
Princewell Arinze Duru

CERTIFICATE OF COUNSEL

Pursuant to Rule 44.2, I, Anne M. Voigts, counsel for petitioner Princewill Duru, hereby certify that the petition for rehearing is restricted to the grounds specified in Rule 44.2. I further certify that the petition for rehearing is presented in good faith and not for delay.

March 19, 2026.

/s/ Anne M. Voigts
Anne M. Voigts
Pillsbury Winthrop Shaw
Pittman LLP
2400 Hanover St.
Palo Alto, CA 94304
(650) 233-4075
anne.voigts@pillsburylaw.com

**Counsel of Record for Petitioner*
Princewell Arinze Duru